



## Competent authority mutual agreement on the implementation of part VI of the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting

The competent authorities of the Netherlands and of the Republic of Singapore (hereinafter referred to as the “Contracting States”) hereby enter into the following mutual agreement (hereinafter referred to as the “Agreement”) to establish the mode of application of the arbitration process provided for in Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as “the Convention”). This Agreement is entered into pursuant to Article 26 (Mutual Agreement Procedure) of the Convention between the Government of the Kingdom of the Netherlands and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (hereinafter referred to as “the Covered Tax Agreement”), as modified by Article 16 of the Convention, and paragraph 10 of Article 19 of the Convention. The competent authorities may modify or supplement this Agreement by an exchange of letters between them.

### 1. Request for submission of case to arbitration

A request that unresolved issues arising from a mutual agreement case be submitted to arbitration pursuant to paragraph 1 of Article 19 of the Convention (hereinafter referred to as the “request for arbitration”) must be made in writing and sent to the competent authority of the Contracting State of residence of the person who presented the case. The request must contain sufficient information to identify the case. The request must also be accompanied by a written statement by each of the persons who either made the request or is directly affected by the case that no decision on the same issues has already been rendered by a court or administrative tribunal of the Contracting States. Within 10 days after the receipt of the request, a competent authority who received it without any indication that it was also sent to the other competent authority will send a copy of that request and the accompanying statements to the other competent authority.

### 2. Minimum information necessary to undertake substantive consideration of the case

For purposes of Article 19 of the Convention, references to “the information necessary to undertake substantive consideration of the case” and “the minimum information necessary for each competent authority to undertake substantive consideration of the case” will be understood as follows:

- a) for the Netherlands, the information set out in Annex B of the Decree of 11 June 2020, no. 2020-0000101607, as such guidance may be amended from time to time;
- b) for Singapore, the information set out in the IRAS e-tax guides entitled “Avoidance of Double Taxation Agreements (DTAs)” and “Transfer Pricing Guidelines”, as such guides may be amended from time to time; and
- c) any other specific additional information requested by the competent authority of a Contracting State within three calendar months after the receipt of the request for a mutual agreement procedure.

The competent authorities of the Contracting States will notify each other of any significant changes that are made with respect to the information requirements provided in their domestic guidance relevant to a request for a mutual agreement procedure.

### 3. Appointment of arbitrators

1. In the circumstances described in paragraph 3 or paragraph 4 of Article 20 of the Convention, the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development who is not a national of either Contracting State will make the relevant appointment within 60 days after receiving a request to that effect from the person who made the request for arbitration. In the circumstances described in paragraph 4 of Article 20 of the Convention, the Chair of the arbitration panel will be appointed from the list that has been mutually agreed by the competent authorities pursuant to paragraph 5 of this Article.
2. Except to the extent that the competent authorities mutually agree on different rules, the procedures provided in Article 20 of the Convention and Article 3 of this Agreement will apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration process has begun. In such circumstances, the competent authorities will also agree on necessary adaptations, as appropriate, to the deadlines provided in Article 4 of this Agreement.



3. An arbitrator will be considered to have been appointed when a letter confirming that appointment and signed by both the arbitrator and the person or persons who have the power to appoint that arbitrator has been communicated to both competent authorities.
4. The competent authorities will appoint arbitrators who have expertise or experience in international tax matters. They need not, however, have experience as either a judge or arbitrator. Each arbitrator appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors and any related persons) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings. In particular,
  - a) No arbitrator may be employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting State or by any person directly affected by the case (or by their advisors or any related persons) at the time of accepting his or her appointment.
  - b) No arbitrator will have been employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting State or by any person directly affected by the case (or by their advisors or any related persons) in the period of twelve months preceding his or her appointment.
  - c) No arbitrator will accept employment in any capacity with the competent authority, tax administration or ministry of finance of either Contracting State or with any person directly affected by the case (or with their advisors or any related persons) in the period of twelve months following his or her appointment.
  - d) Each arbitrator appointed to the arbitration panel will execute a written certification with respect to his or her impartiality and independence. The arbitrators will undertake to promptly disclose to both competent authorities, in writing, any new facts or circumstances that arise during or following the arbitration proceedings that might give rise to doubts with respect to their impartiality or independence.

For the purposes of this paragraph, a person who has accepted an appointment as an arbitrator in another arbitration proceeding pursuant to Part VI of the Convention, or pursuant to the provisions of any other bilateral or multilateral agreement providing for the arbitration of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to be employed, or to have been employed, by the competent authority, tax administration or ministry of finance of a Contracting State.

5. The competent authorities will identify and mutually agree on a list of persons who are qualified and willing to serve as the Chair of an arbitration panel. The competent authorities will review and revise this list as necessary. The persons to be identified for purposes of this list must meet the requirements of paragraph 4 of this Article.

#### 4. Arbitration process

1. Within 90 days after the appointment of the Chair of the arbitration panel (unless, before the end of that period, the competent authorities agree on a different period or agree to use a different type of arbitration process with respect to the relevant case), the competent authority of each Contracting State will submit to each arbitrator and to the other competent authority a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities). The proposed resolution will be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax that may be charged pursuant to the provisions of the Covered Tax Agreement (as it may be modified by the Convention), for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Covered Tax Agreement (as it may be modified by the Convention) (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions. The proposed resolution shall not exceed five pages.
2. The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitrators. Any such supporting position paper must be submitted to the arbitrators and to the other competent authority within the period of time provided for in paragraph 1. A supporting position paper shall not exceed 30 pages, plus annexes. Any annex to a supporting position paper must be a document that was provided by one competent authority to the other, or by the taxpayer to both competent authorities, for use in the negotiation of the mutual agreement procedure case.
3. In the event that the competent authority of one Contracting State fails to submit a proposed resolution within the period of time provided for in paragraph 1, the arbitration panel will select as



its decision the proposed resolution submitted by the other competent authority.

4. Each competent authority may also submit a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. Any such reply submission must be submitted to the arbitrators and to the other competent authority within 150 days after the appointment of the Chair of the arbitration panel. A reply submission shall not exceed 10 pages.
5. As far as possible, the arbitrators will use tele- and videoconferencing to communicate between themselves and with both competent authorities. If a face-to-face meeting involving additional costs is necessary, the Chair will contact the competent authorities who will decide when and where the meeting should be held and will communicate that information to the arbitrators.
6. The arbitration panel will select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and will not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the arbitrators. The arbitration decision will be delivered to the competent authorities of the Contracting States in writing within 60 days after the reception by the arbitrators of the last reply submission or, if no reply submission has been submitted, within 150 days after the appointment of the Chair of the arbitration panel. The arbitration decision will have no precedential value.

## **5. Communication of information and confidentiality**

1. Each arbitrator must agree in writing, prior to acting in an arbitration proceeding, to abide by and be subject to the confidentiality and non-disclosure provisions of Article 27 (Exchange of Information) of the Covered Tax Agreement and of the applicable domestic laws of the Contracting States. If an arbitrator will use staff in connection with the performance of his or her duties, each staff member must execute a similar written agreement.
2. Before the Chair is appointed, the competent authorities will send any correspondence concurrently to both arbitrators.
3. After the Chair is appointed, unless agreed otherwise by the competent authorities and the Chair, the competent authorities will send any correspondence to the Chair (with a copy sent to the other competent authority). The Chair will send any correspondence from the arbitrators to the competent authorities concurrently to both competent authorities.
4. Except with regard to administrative or logistical matters, no arbitrator will have any ex parte communications with one competent authority with respect to the mutual agreement case that resulted in the arbitration proceeding.
5. All communication, except with regard to administrative or logistical matters, between the arbitrators and the competent authorities must be in writing. Unless otherwise agreed by the competent authorities, written communication by facsimile or email is allowed to the extent that appropriate measures are taken to preserve the confidentiality of any information that may identify the taxpayer. Express or priority mail or a courier service will be used for all correspondence other than that sent via facsimile or email.
6. No substantive discussions may take place without all three arbitrators present.
7. No arbitrator will have communications regarding the issues or matters before the arbitration panel with
  - i) the person who presented the case;
  - ii) any other person whose tax liability to either Contracting State may be directly affected by a mutual agreement reached as a result of the case; or
  - iii) their representatives or agents during or subsequent to the arbitration proceedings.
8. At the termination of the arbitration proceedings each arbitrator will immediately destroy all documents or other information received in connection with the proceedings.

## **6. Operating procedures**

1. To the extent needed, the arbitration panel may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Part VI of the Convention or Article 26 (Mutual Agreement Procedure) of the Covered Tax Agreement, as modified by Article 16 of the Convention.
2. If the arbitration panel adopts any additional procedures, the Chair will provide a written copy of them to the competent authorities. These procedures will have effect only if both competent authorities agree.

## **7. Costs**

1. Unless otherwise agreed by the competent authorities:
  - a) each competent authority and the person who requested the arbitration will bear the costs related to its own participation in the arbitration proceedings (including travel costs and costs



- related to the preparation and presentation of its views);
- b) each competent authority will bear the remuneration of the arbitrator appointed exclusively by that competent authority, or appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State because of the failure of that competent authority to appoint that arbitrator, together with that arbitrator's travel, telecommunication and secretariat costs;
  - c) the remuneration of the Chair of the arbitration panel and that Chair's travel, telecommunication and secretariat costs will be borne in equal shares by the two competent authorities;
  - d) other costs related to any meeting of the arbitration panel will be borne by the competent authority that hosts that meeting;
  - e) other costs related to expenses that both competent authorities have agreed to incur will be borne in equal shares by the two competent authorities.
2. Unless agreed otherwise by the competent authorities, compensation of the arbitrators will be determined as follows:
- a) The fees of the arbitrators will be fixed at EUR 1 000 per person per meeting, preparation or travel day. The reimbursement of the expenses of the arbitrators will be limited to the amount reasonably incurred in the course of carrying out their work. With regard to travel expenses, members of the arbitration panel will be reimbursed for business class;
  - b) Each arbitrator will be compensated for no more than three days of preparation, for two meeting days and for travel days. If the arbitration panel considers that it requires additional time to properly consider the case, the Chair will contact the competent authorities to request additional time.

## **8. Failure to communicate the decision within the required period**

In the event that the decision has not been communicated to the competent authorities within the period provided for in paragraph 6 of Article 4, as the case may be, or within any other period agreed to by the competent authorities, the fees of each arbitrator will not be paid. In such a case, the competent authorities may agree to appoint new arbitrators in accordance with Article 20 of the Convention and Article 3 of this Agreement. The date of such agreement to appoint new arbitrators will, for the purposes of the subsequent application of Article 20 of the Convention and Article 3 of this Agreement, be deemed to be the date when the request for arbitration has been received by both competent authorities.

## **9. Final Decision**

1. If a final decision by a court of one of the Contracting States holds that the arbitration decision is invalid, the arbitration decision will not be binding on the Contracting States. In such a case, the request for arbitration under paragraph 1 of Article 19 of the Convention will be considered not to have been made, and the arbitration process will be considered not to have taken place (except for the purposes of Article 21 (Confidentiality of Arbitration Proceedings) and Article 25 (Costs of Arbitration Proceedings) of the Convention and Articles 5 and 7 of this Agreement). In such a case the person who made the request for arbitration may make a new request for arbitration, which will be accepted unless the competent authorities mutually agree that the actions of that person or its representatives were the main reason for the invalidation of the arbitration decision.
2. It is understood that subdivision ii) of subparagraph b) of paragraph 4 of Article 19 of the Convention is intended to apply where, under the domestic laws of a Contracting State, a court has invalidated the arbitration decision based on a procedural or other failure or other conduct that has materially affected the outcome of the arbitration proceeding, which may include -
  - i) a violation of the impartiality or independence requirements applicable to arbitrators pursuant to Article 20 of the Convention and Article 3 of this Agreement;
  - ii) a breach of the confidentiality requirements applicable to arbitrators pursuant to Article 21 of the Convention and Article 5 of this Agreement;
  - iii) any other failure to adhere to the procedural requirements provided in Part VI of the Convention and this Agreement; or
  - iv) collusion between the person who presented the mutual agreement procedure request and one of the Contracting States.
3. It is understood that Article 9 of this Agreement does not provide independent grounds for the invalidation of an arbitration decision where such grounds do not exist under the domestic laws of the Contracting States.

## **10. Implementing the arbitration decision**

The competent authorities will implement the arbitration decision within 90 days after the communication of the decision to them by reaching a mutual agreement on the case that led to the arbitration.



## 11. Entry into effect of Part VI of the Convention

1. As provided by Article 36 (Entry into Effect of Part VI) of the Convention the provisions of Part VI (Arbitration) of the Convention will have effect with respect to cases presented to the competent authority of a Contracting State on or after the later of the dates on which the Convention has entered into force for each of the Contracting States.
2. Pursuant to the reservation provided in paragraph 2 of Article 36 of the Convention, Part VI of the Convention will apply to a mutual agreement procedure case presented to the competent authority of a Contracting State prior to the later of the dates on which the Convention has entered into force for each of the Contracting States, only to the extent that the competent authorities mutually agree that it will apply to that specific case. Within 10 days after such a mutual agreement, the competent authorities will provide written notification to the person who presented the case of (i) the mutual agreement and (ii) the start date of the two-year period (the mutual agreement will specify which of the two competent authorities will provide this notification).

## 12. Reservations with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Convention

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the Convention, the following reservations have been made with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Convention:

The Republic of Singapore reserves the right to exclude from the scope of Part VI (Arbitration) cases involving the application of its domestic general anti-avoidance rules contained in Section 33 of the Income Tax Act, case law or juridical doctrines. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Singapore shall notify the Depositary of any such subsequent provisions.

*For the Competent Authority of the Kingdom of the Netherlands*  
*R. Janssen*  
*Director Consumer Tax, Customs Policy*  
*and International Tax*  
*Ministry of Finance*

*Signed on 12 January 2024*

*For the Competent Authority of the Republic of Singapore*  
*C. Jia Ying*  
*Tax Director, Policy Branch*  
*Assistant Commissioner*  
*International Tax and Relations Divisions*  
*Inland Revenue Authority of Singapore*

*Signed on 12 January 2024*